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ABSTRACT

The General Accounting Office reviewed the Department of Labor's process for determining worker eligibility for the Trade Adjustment Assistance (TAA) program. TAA provides help in making the transition to new employment to workers certified by the Department of Labor as affected by imports. The program gives workers job counseling, occupational and remedial training, placement assistance, and support services, as well as job search and reallocation allowances and up to 52 weeks of extended unemployment benefits. The review focused on two areas: the Department of Labor's practices for investigating petitions and state efforts to assist workers in filing petitions. The Department of Labor's application of the TAA eligibility criteria also was investigated. The evaluation was conducted through a review of a sample of 150 randomly selected petitions affecting an estimated 16,641 workers from the 2,983 petitions filed during 1990 and 1991, and through a comparison of actual and expected numbers of workers filing petitions in each state. The review identified several problems with the current TAA certification process that may result in workers not filing petitions or erroneous decisions to approve or deny TAA assistance to workers. The study estimated that 63 percent of the petitions had flawed investigations (about equal numbers of flaws in certified and denied petitions). Although specific improvements in the certification process can be made, given the Department of Labor's need to determine worker eligibility quickly, it is not clear how much improvement is realistic without changing the process. Suggestions were made for combining all dislocated worker programs into a single, comprehensive program or to modify the legislation defining whether imports have a significant impact on worker dislocation. (Contains two figures.) (KC)

United States General Accounting Office

GAO

Report to the Honorable
Albert Gore, Jr., U.S. Senate

October 1992

DISLOCATED WORKERS

Improvements Needed in Trade Adjustment Assistance Certification Process

ED 392 967

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United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-249014

October 19, 1992

The Honorable Albert Gore, Jr.
United States Senate

Dear Senator Gore:

This report responds to your request that we evaluate the Department of Labor's process for determining worker eligibility for the Trade Adjustment Assistance (TAA) program. You expressed concern that Labor's process for certifying workers was unfairly denying workers access to needed assistance.

An entitlement program, TAA provides workers, certified by Labor as import impacted, help in making the transition to new employment. The program gives workers job counseling, occupational and remedial training, placement assistance, and support services, as well as job search and relocation allowances. TAA also gives eligible workers up to 52 weeks of extended Unemployment Insurance (UI) benefits. In fiscal year 1991, the TAA program spent $181 million on cash payments and services.

Background

To be eligible for the TAA program, a worker must be a member of a group of workers that the Department of Labor certifies as import impacted.[1] In 1991, workers filed 1,509 petitions, affecting an estimated 152,832 workers; Labor certified 546 petitions, affecting 52,194 workers.

The certification process starts when three or more workers from the same company, or their representative, petition Labor to determine that their jobs have been lost or will be lost due to imports.[2] States are required to give UI claimants information on the TAA program and facilitate the early filings of petitions. Once a petition is filed, Labor conducts an investigation to determine if imports have contributed to the loss of employment.

Determining factors in the investigation include whether (1) a significant number of workers have lost or are threatened with the loss of their jobs, (2) the company's sales or production has decreased, and (3) imports of articles "like or directly competitive" with the company's products have

[1]Dislocated workers may also receive assistance from the Economic Dislocation and Worker Adjustment Assistance (EDWAA) program. All dislocated workers are eligible for the EDWAA program regardless of the reason for their dislocation. EDWAA offers services similar to TAA except that it does not give workers extended UI benefits. During program year 1990, EDWAA provided services to 288,000 workers at a cost of $390 million.

[2]See appendix I for a flow chart showing the certification process.

increased and "contributed importantly" to the decline in its sales or production. Federal law allows Labor up to 60 days to complete its investigation and make its final determination. Denials may be appealed either to Labor for reconsideration or to the U.S. Court of International Trade.

Our review of the TAA certification process focused on two areas: (1) Labor's practices for investigating petitions and (2) state efforts to assist workers in filing petitions. We also looked at Labor's application of the TAA eligibility criteria.

To evaluate Labor's investigative practices, we reviewed 150 randomly selected petitions affecting an estimated 16,641 workers from the 2,983 petitions filed during 1990 and 1991. Our sample allows us to estimate the number of petitions with flawed investigations that were filed in 1990 and 1991 within a range of +/- 8 percentage points at the 95-percent confidence level. We reviewed the petitions to assess whether the investigators followed Labor's procedures in conducting the investigations, but we did not attempt to determine whether a petition should have been certified. We also reviewed several cases appealed to the U.S. Court of International Trade.

To assess state efforts to assist workers in filing petitions, we compared actual and expected numbers of workers filing petitions in each state during 1990 and 1991. The expected number of workers filing petitions was estimated using regression analysis, which considered such factors as unemployment rates, industry mix, and total employment within states. We then asked TAA officials in eight states—four where more workers filed petitions than expected and four where fewer workers than expected filed petitions—about efforts to help workers in filing petitions.

To understand the impact of Labor's application of the TAA eligibility criteria, we reviewed our sample of 150 petitions to compare the certification outcomes of workers who provided services or produced component parts. From these petitions, we identified examples that illustrate how Labor's interpretations of criteria influence the eligibility of workers for assistance.

Results in Brief

Problems in the TAA certification process raise questions about how Labor determines worker eligibility. Flaws in Labor's petition investigations and limited state assistance to workers may result in petitions not being filed or erroneous decisions to approve or deny assistance to workers.

More specifically, we estimate that flawed investigations were conducted in 63 percent of the petitions filed in 1990 and 1991. Major flaws included (1) incomplete, inaccurate, or unsubstantiated data collected from the company, (2) incorrect or omitted analyses of trade statistics, and (3) inadequate or omitted customer surveys. Many of these flaws resulted because pressure to complete the complex investigations in 60 days presses investigators to take shortcuts in collecting and analyzing data. Despite these problems, few 1990 and 1991 decisions were appealed.

The extent to which states assist workers in filing TAA petitions may result in some workers, who are adversely affected by imports, not filing petitions. We found considerable variations among the states in the number of workers filing TAA petitions. Analysis of selected states where more workers filed petitions than expected and states where fewer workers filed than expected showed that these states also varied in the extent of outreach and assistance provided to workers filing petitions. The selected states where more workers filed petitions than expected provided more extensive assistance than those where fewer workers filed.

Although specific improvements in the certification process can be made, given Labor's need to quickly determine worker eligibility, it is not clear how much improvement is realistic without changing the process.

Majority of Labor's Investigations Flawed

The many problems in Labor's TAA investigations raise questions about the validity of Labor's certification decisions. We estimate that 1,889 (63 percent) of the petitions filed in 1990 and 1991 had flawed investigations. Flaws were found about equally in certified (60 percent) and denied (65 percent) petitions. As a result of these flaws, workers entitled to TAA benefits may have been denied needed assistance; in other instances, workers may have received benefits even though they were not qualified for the program.

Our review identified problems in all three areas of Labor's investigations—company data collection, analyses of trade statistics, and customer surveys. In many cases, the investigations were deficient in more than one area. Many of these deficiencies occur because the pressure to complete the investigation presses investigators to, as one Labor official stated, "...take whatever they can get to finish in 60 days."[3]

The TAA Investigative Process

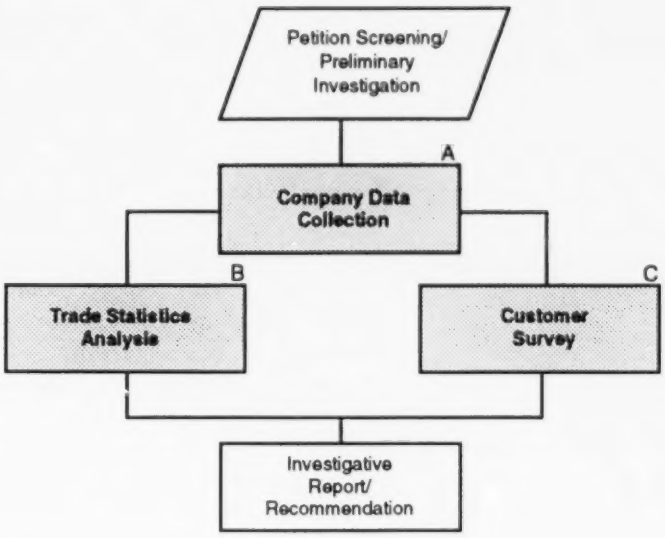
Labor's investigative process generally involves three critical steps. As shown in figure 1, the first step is to determine whether a company's sales or production has decreased and if a significant number of the company's workers have lost their jobs. Either through a questionnaire or by visiting the company, Labor collects and analyzes company data for the period covered by the petition. During this step, information on the company's import practices is also analyzed to determine if these practices have contributed to the workers' loss of employment.

The next step is determining if imports of like or competitive products have increased. To determine this, Labor must identify which products are "like or directly competitive" with the company's products and then analyze the trade statistics for those products for the current year to date and 2 or more years prior to the period covered in the petition.

If the imports of like or competitive products have increased, Labor must determine whether those imports "contributed importantly" to the company's decline in sales and production. Labor does this by surveying customers about purchases from foreign sources. To perform a customer survey, Labor must first obtain a list of customers from the company showing amounts of purchase by each customer over the past 2 calendar years and year to date compared to the same period for the prior year. Then, Labor must contact each customer to determine whether the customer has shifted its purchases to foreign sources.

[3]Our analysis showed that 1,041 (36 percent) of the petition investigations in 1990 and 1991 required more than 60 days.

Figure 1: Labor's Investigative Process



Investigative Steps

A	• Collect and analyze company information to determine if sales, production, and employment have decreased. • Collect information on parent company import practices to determine if imports have increased.
B	• Collect and analyze national statistics on imports by industry to determine if imports of like or directly competitive products have increased.
C	• Collect and analyze customer import practices to determine if purchases have shifted to foreign sources.

Company Data Collection

In an estimated 1,233 (41 percent) of the investigations, company information obtained was incomplete, inaccurate, or unsubstantiated. As a result, we could not determine whether (1) a significant number of workers had lost their jobs, (2) sales or production had decreased, or (3) company imports were contributing to the decline in production.

For example, in one case, Labor relied on unsubstantiated information regarding the parent company's import practices and denied the petition. Only after union officials intervened on behalf of the workers did Labor learn that the company was importing goods from its foreign operation. As a result, Labor reversed its position and certified the workers.

Labor's reliance on unsubstantiated company testimonial evidence (as in the example above) has also been questioned by the U.S. Court of International Trade. For example, the court remanded one case to Labor for further investigation because Labor had "...relied on questionable data including inconsistent sources, and uncorroborated and possibly biased testimony."

Analyses of Trade Statistics

Labor also conducted inadequate reviews of recent trade statistics to determine whether imports of like or directly competitive products have increased. For an estimated 776 (26 percent) of the 2,983 petitions filed in 1990 and 1991, either analyses of national trade statistics were not performed, the wrong time periods were used, appropriate products were not considered, or the analyses of the data were erroneous.

For example, in one case, Labor's analysis of the trade statistics did not consider the appropriate period of time, and the petition was denied. Labor's policy in analyzing trade statistics is to consider the 2 years prior to the filing of the petition and year to date compared to that part of the previous year. However, in this instance, Labor considered only the 9-month period prior to the filing of the petition. Labor did not consider trade data for the 2 years prior to the filing of the petition (as required by its policy), which showed that imports of the products had steadily increased each year. Similarly, another petition was denied certification based on a decline in imports of the product during a 3-month period; however, the trade statistics showed substantial increases in imports in each of the previous 2 years.

The U.S. Court of International Trade has also questioned Labor's analysis of trade statistics. In one case, which has been remanded to Labor twice for further investigation, the court stated that the case file lacked a reasoned explanation of why Labor included in its "like and competitive" product analysis, products that differed from the stated criteria.

Customer Surveys

To determine whether increasing imports have "contributed importantly" to the specific decline in business, Labor used customer surveys in about 1,631 (55 percent) of its investigations in 1990 and 1991. We estimate that 1,333 (82 percent) of those cases had problems with the survey. According to Labor investigators, some companies are reluctant to give Labor lists of their customers, and many lists do not show the level of purchases for each customer. However, our work showed that even when customer lists were provided, required customer surveys were not conducted, only a limited number of customers were surveyed, or Labor used general statements from customers such as "company does not import" without substantiating the information.

In one example, Labor surveyed two of a company's four customers representing about 30 percent of the company's business. One customer was importing and stated that future needs would also be filled through imports. Labor tried unsuccessfully to contact the second company's officials. However, the investigator talked with an employee who said she was not qualified to say whether the company was purchasing imports, but she did not believe it was. Despite the limitations of this information, Labor concluded that customer purchases of imports were insignificant and that imports had not contributed importantly to the decline in business and denied the petition.

The court has also raised questions about the validity of Labor's customer surveys. In one remanded case, the court found that Labor's survey of the company's customers represented only 30 percent of the company's lost sales and did not include the two customers with the greatest decline in purchases. Further, the court reported some customers failed to provide complete information, which made the results even less conclusive. In another case, the court questioned why Labor failed to properly investigate both products involved in the case without providing a reason. This case was remanded to Labor twice before it was certified.

Despite Flaws, Few Decisions Are Appealed

Despite flaws in Labor's investigations, few determinations are appealed. If a petition is denied, the workers may either request reconsideration by Labor or appeal Labor's decision to the U.S. Court of International Trade. Although 65 percent of the 92 denied petitions in our sample had flawed investigations, in only 19 cases did petitioners request that Labor reconsider its decision and in only 3 did petitioners appeal Labor's decision to the Court of International Trade. Of those requesting reconsideration, Labor agreed to review three petitions and reversed its decision in two cases. Of the three cases appealed to the court, one was withdrawn by the petitioner, one was remanded to Labor, and one is still being reviewed by the court.

Some States Provide Limited Assistance to Workers Filing TAA Petitions

In the eight states in our review, the number of workers filing petitions appears related to the extent to which those states assist workers in filing petitions. To be eligible for TAA, a group of three or more workers must file a petition with Labor. To help alert workers to the TAA program and facilitate the early filing of petitions, the 1988 Omnibus Trade and Competitiveness Act provided that states must inform all UI claimants about program benefits and the procedures and deadlines for applying.

To determine whether states had the expected number of workers filing petitions, we compared the actual to the expected numbers of workers filing petitions in each state during 1990 and 1991. We obtained the actual number of workers filing petitions from Labor data. The number of workers that would be expected to file TAA petitions in each state was estimated using a regression analysis that considered three types of factors that we found to be statistically associated with the number of workers filing petitions in a state—the unemployment rate, the industry mix, and employment levels.

Using the results of the comparison, we selected four states that had more than expected workers filing petitions and four that had fewer than expected workers filing petitions. Further analysis of these eight states showed that the four states with high filing levels tended to have more active outreach programs than the states with low filing levels.

High filing level states tended to expend larger amounts of staff resources to facilitate the early filing of petitions than did low filing level states. Three states with high filing levels had a TAA program specialist accompany their "rapid response" teams[4] when the teams visited workers who had received notice of a plant closing or mass layoff. The specialists provided workers with program information and assistance.

In contrast, the four states with fewer than expected workers filing petitions conducted little, if any, outreach. In these states, most staff had responsibilities for other programs besides TAA. As one state official commented, "although one person in each local office is designated as a trade assistance specialist, they may not be familiar with the program...."

Officials from two of the four states with low filing levels told us that they did not routinely provide information on the TAA program when workers filed UI claims. Officials in the other two states told us that TAA program information was available at local UI offices. However, when we visited local offices in these states, we found that program information was not displayed or routinely distributed. In addition, few, if any, of the local staff in these states were knowledgeable about the TAA program or discussed the program with workers filing UI claims. Officials in the four states with low filing levels acknowledged that their lack of outreach may have resulted in some workers being uninformed about the availability of TAA assistance.

[4]States established teams to react promptly to plant closings or layoffs in an attempt to provide workers with information about available services. UI and TAA specialists are sometimes a part of these "rapid response" teams.

TAA Eligibility Criteria Deny Assistance to Some Workers Adversely Affected by Imports

Based on our analysis of petitions filed in 1990 and 1991, we estimate that 1,193 (40 percent) were from workers who provided services or produced component parts.[5] These petitions, however, were generally denied by Labor because the statute language regarding "imports of articles" and "articles produced" does not extend to workers who provide services. Similarly, workers who produce component parts are excluded by Labor because a component part is not "like or directly competitive" with a finished product. The courts have generally validated such determinations.

As a consequence, workers providing services or producing component parts are denied benefits when they are not employees of the company adversely affected by imports of the finished product. For example, in one case, workers who produced bumpers were not eligible for TAA, because they did not work directly for the company affected by increased imports of finished automobiles.

Labor has interpreted the eligibility criteria differently with respect to some workers in one segment of the apparel industry. The apparel industry accounted for 577 of the petitions filed in 1990 and 1991. We estimated that about 200 of these were from workers in "cut and sew" operations that were not corporately tied to the manufacturer of the finished product. As component part producers or as service workers, these workers, like those in other industries, contributed to finished products that were like or directly competitive with imports, but they did not produce the finished goods. However, in these instances, Labor has determined that stitching is a necessary step in the production of the finished garment and has certified the workers eligible for TAA. Labor has not extended its reasoning, however, to workers of an independent company engaged in dyeing fabrics for a manufacturer. These workers were denied certification on the basis that they did not produce an "article."

In 1988, the Congress extended TAA eligibility to workers engaged in exploration and drilling for crude oil and natural gas. Previously, these workers were denied certification because they, like other service workers, did not produce an "article" as required for TAA eligibility. The Congress also agreed to expand the TAA eligibility criteria to include workers who supply essential goods (parts, materials, or components) or essential services to firms directly affected by imports. However, this extension was contingent on the establishment of an import fee. Because

[5]This does not include petitions from workers in the apparel industry who are considered to be an essential part of the production of a finished product or from workers engaged in exploration or drilling for crude oil or natural gas who are eligible for the TAA program.

the import fee was never established, the extension of coverage to these workers did not become effective.

Conclusions

Our review identified several problems with the current TAA certification process that may result in workers not filing petitions or erroneous decisions to approve or deny TAA assistance to workers. Although specific improvements in the certification process can be made, given Labor's need to quickly determine worker eligibility, it is not clear how much improvement is realistic without changing the process.

The President has proposed combining all dislocated worker programs into a single, comprehensive program providing services to all dislocated workers regardless of the reason for dislocation. This proposal would eliminate the need for certifying workers as import impacted. However, it may also reduce the benefits available to workers currently being served under the TAA program.

Matter for Consideration by the Congress

If the Congress does not adopt the President's proposal, then it may wish to consider other alternatives for streamlining the process. One alternative it may wish to consider would be to, in effect, modify the legislative definition of "contributed importantly."

Currently, imports are found to have contributed importantly if (1) the company's own import practices result in a decline in production and employment or (2) analyses of trade statistics show that imports have increased across the market and customer surveys show that the employer's customers have shifted their purchases to imports.

Given the difficulty in conducting customer surveys—82 percent of the surveys in 1990 and 1991 were flawed—the Congress may wish to consider modifying the legislation to allow imports to be deemed to have "contributed importantly" when imports of like or directly competitive products have increased across the market without showing that the employer's customers have shifted to purchasing imported products. This would significantly streamline the certification process and reduce the burden on Labor's investigators. However, this could also result in more dislocated workers becoming eligible for assistance and thus, increase the cost of the TAA program.

Our work was performed in accordance with generally accepted government auditing standards between December 1991 and August 1992. As requested, we did not obtain written agency comments on this report. However, we did discuss its contents with the Department of Labor and with the state TAA officials. We have incorporated their comments where appropriate. We are sending copies of this report to the Secretary of Labor and other interested parties.

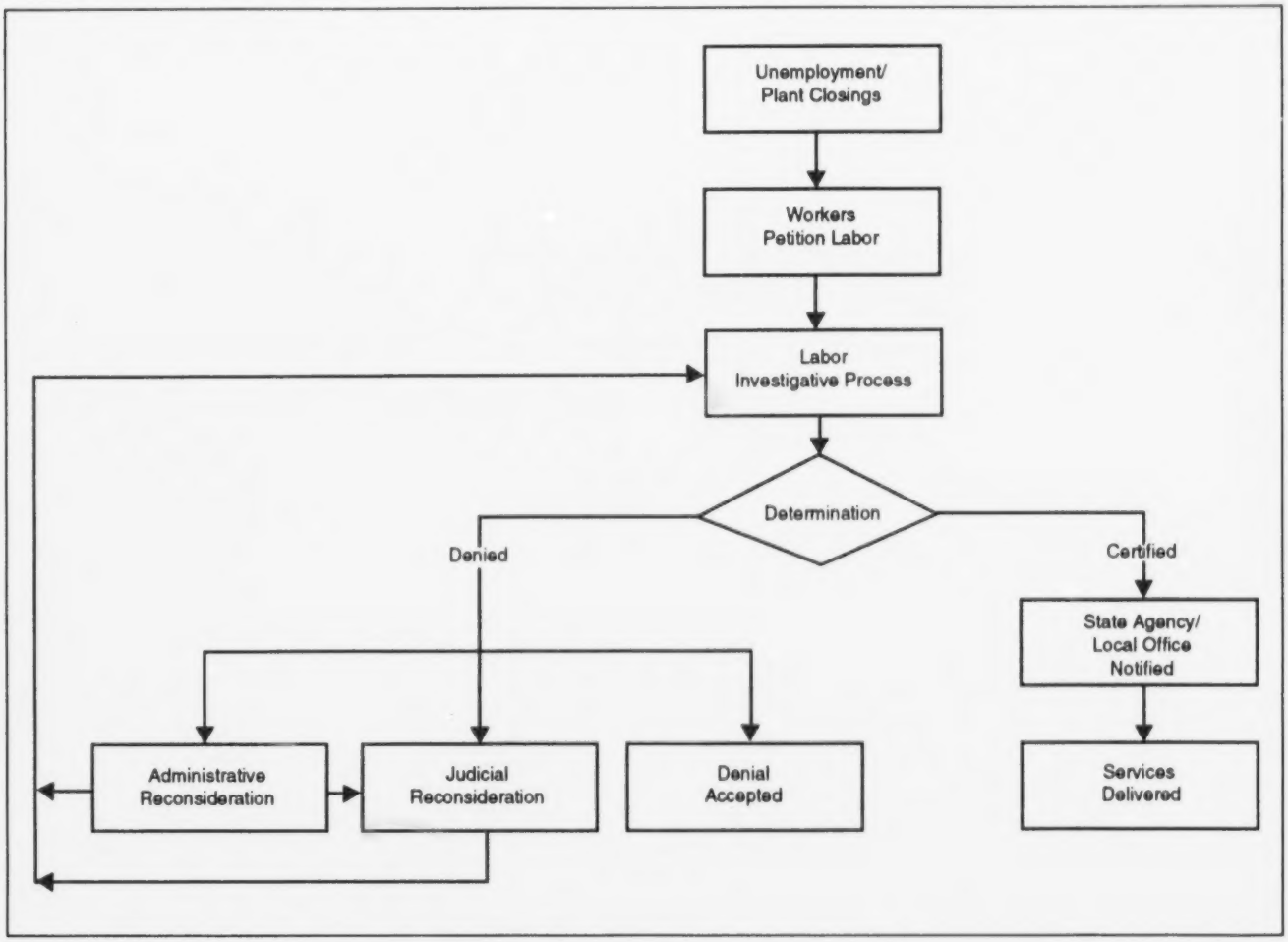
This work was performed under the general direction of Linda G. Morra, Director, Education and Employment Issues, who may be reached at (202) 512-7014. Other major contributors are listed in appendix II.

Sincerely yours,

Edward A Klensmore

for Lawrence H. Thompson
Assistant Comptroller General

TAA Certification Process



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